IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.189 OF 1991

Ananda Babu Kamble. ...Petitioner.
Vs.
Bank of Maharashtra & Ors. ...Respondents.
....
Mr.C. U. Singh with N. V. Bandiwadekar for the Petitioner.
Mr. P.P. Chavan i/b. Little & Co. for the Respondents.
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CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

June 21, 2005.

ORAL JUDGMENT (PER DR. D.Y. CHANDRACHUD, J.):

The Petitioner was working as a Branch Manager in a Branch of the Bank of Maharashtra, situated at Bhedasgaon in the Taluka of Shahuwadi in the District of Kolhapur. A chargesheet was issued to the Petitioner on 19th April 1988 in the course of disciplinary proceedings involving a charge of misconduct. Regulation 24 of the Bank of Maharashtra Officers' (Conduct) Regulations, 1976 was invoked and it was alleged that the Petitioner had not taken all possible steps to protect the interests

of the Bank; that he had not discharged his duties with integrity, honesty, devotion and diligence and that his acts and omissions amounted to conduct unbecoming of a Bank Officer, thus violating Clause 3(1) of the Regulations. The charges of misconduct involved the dealings of the Petitioner in respect of loans allegedly disbursed to two borrowers under the Integrated Rural Development Programme for the establishment of small businesses of Kirana Shops. The amount of advance in each case was Rs.10,000/-, the purpose of the loan being for working capital, purchase of stock-in-trade, furniture and equipment for the shops. It is alleged that the loan disbursement was debited to the loan account by transfer and came to be credited to a Demand Draft issued under the Charan Branch of the Bank "favouring ourselves". In both the cases, it was alleged that there was no evidence of the amounts being paid to the borrowers in any form whatsoever and the borrowers denied having received the amounts of loan. Each of the loan amounts was routed through the transfer scroll by debiting the loan accounts and crediting the Charan Branch. DDNo.263906 "favouring ourselves" dated 1st April 1987 was

alleged to have been encashed by the Manager of the Bhedasgaon Branch on 2nd April 1987. There was similarly no evidence to show that the amount had been paid to the borrowers or to their suppliers or that it had been utilized for the purpose for which it was sanctioned.

2. On these allegations, disciplinary proceedings came to be convened. The Petitioner participated in the disciplinary proceedings and denied the charges. After evidence was adduced, the Enquiry Officer submitted his report and came to the conclusion that the Petitioner was guilty of misconduct. The Enquiry Officer found that while releasing the loan payments, the Petitioner, as the Branch Manager, did not either credit the Savings Bank Account of the two borrowers, nor for that matter, did he issue Pay Orders directly to the suppliers towards the supply of goods to the borrowers. Instead of following the routine procedure, the Petitioner issued DD No.263906 in the amount of Rs.20,000/- on the Charan Branch of the Bank “favouring ourselves”. On 1st April 1987, the Charan Branch had a non-business transacting

working day. Normally, cash needs of the Bhedasgaon Branch, where the Petitioner was working, were being met by drawals on the Bambavade Branch. On 1st April 1987, the Bambavade Branch had indicated by its letter (Exh.E1) that an amount of Rs.25,000/- had already been paid to the Petitioner and that it was not possible for that Branch to honour the request of the Petitioner for the payment of a further amount of Rs.20,000/- on the same day. The Petitioner thereupon approached the Charan Branch on 2nd April 1987 and encashed a Demand Draft for Rs.20,000/-. The Petitioner did not enter this cash remittance of Rs.20,000/- in the cash scroll of the Bank. The Petitioner did not credit the amount of Rs.20,000/- to the Savings Bank Accounts of the two borrowers, B.L. Kamble and M.K. Mhole. The case of the Petitioner was that he had paid the amount directly to the suppliers, Vilas General Stores and Gurukrupa Saw Mill for the goods supplied by them to the borrowers under the Integrated Rural Development Programme. The Enquiry Officer thereupon adverted to the report of the Inspecting Officer who had been deputed by the Chief Manager (Inspection). The bills of Vilas General Stores and

Gurukrupa Saw Mill did not bear any specific endorsement of the receipt of goods by B. L. Kamble. The Inspecting Officer had noticed that when he met both the borrowers, they had denied having availed of the loans in question or of having received any amounts. The Enquiry Officer further held that the counter signature of M.K. Mhole on the bill of the supplier differs from the signatures on the loan application and loan documents. The total of the bills was Rs.14,185/-. The Enquiry Officer noted that it was improbable that an applicant who was living below the poverty line, could have contributed Rs.4,515/- from his own sources in a lump sum on a single day. One of the two borrowers was alleged to have repaid an amount of Rs.3,217/- towards repayment of loan. The Enquiry Officer found that it was not established by the defence that this amount had been brought in by a member of the Sub Staff of the Bank from the borrower and there was neither any thumb impression nor a signature on the pay-in-slip. The other borrower, B. L. Kamble, had after allegedly availing the loan of Rs.10,000/-, applied to the Bank for the post of a part-time sweeper in the Bhedasgaon Branch. One of the shops, Vilas

General Stores, was situated just in front of the Bhedasgaon Branch. The Enquiry Officer found that even a simple glance at the shop was sufficient to reveal that the shop was incapable of supplying goods worth Rs.5,000/- on a single day. In these circumstances, the Enquiry Officer concluded by holding that after the encashment of the Demand Draft, it had not been demonstrated that the loan proceeds had gone to the borrowers or for that matter to the suppliers and that consequently, an inference could be drawn that amount had been pocketed by the Petitioner. The charge of misconduct was held to be proved.

3. A copy of the enquiry report was supplied to the Petitioner together with a notice dated 26th December 1988 calling for an explanation. The Petitioner submitted his reply on 26th December 1988. The disciplinary authority passed an order on 27th March 1989 concurring with the report of the Enquiry Officer holding that the charge of misconduct was established. The Petitioner accordingly came to be dismissed from service.

4. The Petitioner carried the matter in a departmental appeal on 21st June 1989. The Appellate Authority noted that the Petitioner was a sufficiently senior Branch Manager who had worked in that capacity approximately for five years. Since he was posted in a rural area, the Petitioner was acquainted with governmental schemes especially with the IRDP. The Appellate Authority held that these were not the only cases of IRDP loans and the Petitioner was well acquainted with the procedure governing the disbursement of loans. Hence, there was no substance in the submission of the Petitioner that there was heavy pressure due to a shortage of staff and that the lapses which were committed were only procedural. The Appellate Authority held that it was not disputed that the draft was drawn on the Charan Branch and was drawn "in favour of ourselves". A draft is drawn "favouring ourselves" when cash is required for the purpose of the Branch and it was, therefore, the duty of the Branch Manager to credit the cash at the Branch and to hand it over to the cashier. The evidence, however, was found to have established that the Petitioner had encashed the Demand Draft at the Charan

Branch and had not deposited the moneys with the Bhedasgaon Branch which in itself established a misappropriation of the funds of the Bank. The Enquiry Officer had also held that the bills of Vilas General Stores were fake and the firm had not received any cash towards its bills. A Review Petition came to be dismissed by the General Manager, (Planning and Personnel) on 23rd June 1990.

5. This petition was admitted on 14th June 1991. By an interim order dated 12th July 1991, the Bank was directed to pay to the Petitioner, the monthly subsistence allowance that was being paid to him till the order of dismissal. The Court is informed that the Bank has complied with the interim order of the Court by the continued deposit of the subsistence allowance until date. The Petitioner is stated to have withdrawn the subsistence allowance on furnishing security as directed.

6. On behalf of the Petitioner, it has been submitted that (i) The Inspecting Officer, Shri Majali, had written down the

statements of the borrowers in his own hand writing and had obtained their signatures without explaining the contents thereof and by administering threats. Hence, it was submitted that the statements of the borrowers should not be used against the Petitioner; (ii) The two borrowers had subsequently issued statements informing the Bank that they had received the loan amounts and had no complaint in respect of the loan. One of the borrowers informed the Bank that he had not furnished his statement to the Inspecting Officer voluntarily and that he had repaid a part of the loan; (iii) None of the borrowers was examined as a witness in the departmental enquiry. It may be recorded that the Petition was amended in 1992 in order to challenge the authority of the Regional Manager to act as a Disciplinary Authority and punishing authority. A detailed affidavit in reply was filed to the amended petition. At the hearing of the present proceedings, the challenge to the power of the Regional Manager to act as Disciplinary Authority has not been pressed. The petition has, thus, been argued on merits.

7. In dealing with the submissions which have been urged before the Court, it would be appropriate to revisit some of the basic principles that must guide the approach of this Court in the exercise of its jurisdiction under Article 226 of the Constitution in dealing with a case involving the disciplinary jurisdiction of an employer. The charge of misconduct in disciplinary proceedings has to be established by the employer on the basis of a preponderance of probabilities. A charge in a disciplinary enquiry involves an allegation by the employer that the employee has committed a breach of the Service Rules with reference to which the charge of misconduct is sought to be established. The High Court in the exercise of its jurisdiction under Article 226 of the Constitution, does not act as a primary fact finding authority or for that matter, as an Appellate Authority over the finding of fact which has been arrived at in the course of the disciplinary proceedings. The Enquiry Officer, in the first instance, and the hierarchy of appellate and reviewing authorities laid down in the Service Rules are vested with the primary power to scan the evidence and to determine whether a finding of misconduct can be founded on the

material on the record of the enquiry. If there is some evidence on the record which is acceptable, the High Court would not interfere in the exercise of its jurisdiction under Article 226 of the Constitution. Disciplinary proceedings are not subject to the rigours of the strict rules of evidence contained in the Evidence Act. The enquiry has to be consistent with the principles of natural justice. The interference of the Court would be warranted if there is no evidence to support a finding of misconduct or when the findings are so perverse that no ordinary or prudent person could have arrived at such findings. The sufficiency of evidence to support the findings of misconduct does not lie in the realm of judicial review. This is consistent with the legal position that where there is some evidence to sustain the finding of misconduct, the sufficiency of that evidence cannot be a matter of reappraisal by the Court under Article 226 of the Constitution.

8. In the present case, there are several circumstances which lend support to the finding of misconduct that has been arrived at in the course of the disciplinary proceeding: (i) The

Petitioner had worked as a Branch Manager for nearly five years and was obviously conscious of the procedure followed by the Bank in the sanctioning and disbursement of IRDP loans; (ii) The normal procedure would have been for the Petitioner to credit the proceeds of the sanctioned loans to the Savings Bank Accounts of the two borrowers or to issue Pay Orders to the two suppliers under the instructions of the borrowers. Instead of following the usual procedure, the Petitioner issued a Demand Draft in the amount of Rs.20,000/- on the Charan Branch "favouring ourselves". The Charan Branch had a non-business transacting day on 1st April 1987; (iii) The normal cash needs of the Branch where the Petitioner was working, were being met by the Bambavade Branch which had already issued an amount of Rs.25,000/- to the Petitioner on 1st April 1987. The Bambavade Branch, therefore, declined to honour the request of the Petitioner for remittance of a further amount of Rs.20,000/- on 1st April 1987; (iv) The Petitioner thereupon approached the Charan Branch on 2nd April 1987, encashed the Demand Draft for Rs.20,000/- and gave a discharge on the reverse of the Demand Draft; (v) The cash

remittance of Rs.20,000/- was not entered by the Petitioner on the cash scroll of the Bank. The amount was not credited to the Savings Bank Accounts of the borrowers. As the appellate authority noted a demand draft is drawn by a branch of a Bank "favouring ourselves" to meet the requirements of the Branch and the money ought to have been credited to the Branch or handed over to the cashier. Not doing so amounted to misappropriation; (vi) The Enquiry Officer found that the amount had not been paid to the suppliers. This is a pure finding of fact. One of the borrowers, Mr.Mhole, was living below the poverty line and the Enquiry Officer was, entitled to draw the conclusion that it was improbable that the borrower would pay an amount of Rs.4,515/- from his own sources in a lump sum on a single day. The second borrower had, made an application for appointment on the part time post of a sweeper in the Branch at Bhedasgaon after allegedly availing a loan of Rs.10,000/-. The Enquiry Officer found that the borrower was innocent in regard to the loan transaction which was alleged to have taken place on 1st April 1987. These findings are sufficient to support the finding of misconduct that has been arrived

at against the Petitioner. The findings are based on material on the record of the enquiry. The borrowers in the present case, are alleged by the Petitioner to have resiled from the statements which were made to the Inspecting Officer of the Bank. It is also submitted that the charge of misconduct against the Petitioner must fail due to the inability of the Bank to produce the two borrowers as witnesses during the course of disciplinary proceedings. We find no merit in the submission. The circumstances in which the two borrowers are alleged to have resiled from their earlier statements have been adverted to in para 17 of the petition by the Petitioner himself and an extract therefrom is culled out hereinbelow:

> "The Petitioner states that when he learnt about such statements under coercion and threat being extracted by Mr. Majali from the said borrowers, the Petitioner personally approached the said borrowers and requested them to state in writing that they did receive the amounts from the Petitioner and further that the statements recorded by Mr. Majali were not voluntary but were made under coercion and threat. The Petitioner states that accordingly, the said borrowers, did voluntarily give in writing that they did receive the loan amounts from the Petitioner."

In a matter such as the present, the Court cannot impose upon the employer the requirement of proving every link in a transaction involving unlawful behaviour on the part of an employee. Direct evidence is not necessarily forthcoming to establish every conceivable link in a chain of unlawful behaviour. But that is precisely the reason why in a disciplinary proceeding the standard of proof and the rules of evidence which govern criminal trials are not attracted. To reiterate the settled position, a charge of misconduct in a disciplinary proceeding has to be proved on a preponderance of probabilities, on the basis of some acceptable evidence. In the present case, there is evidence on the record to sustain the finding of misconduct on the part of the Petitioner. The entire sequence of the transaction in which the Petitioner as a Manager of a Branch of a Nationalised Bank (i) Deviated from usual procedure; (ii) Failed to credit the amount of the loans to the Savings Bank Accounts of the borrowers; (iii) Drew a Demand Draft “favouring ourselves” but failed to account for the proceeds of encashment in the cash scroll of the Branch are circumstances which are sufficient to support the finding of misconduct. The

finding that the moneys were neither paid over to the borrowers or to the suppliers is a finding of fact. In sum and substance, therefore, having considered the matter, we do not find that the interference of this Court under Article 226 of the Constitution is warranted having regard to the settled parameters governing the jurisdiction of a reviewing Court in relation to the exercise of the disciplinary jurisdiction of an employer.

9. The subsistence allowance which has been paid to the Petitioner during the pendency of these proceedings in pursuance of the interim order shall not be liable to be refunded by the Petitioner. The security furnished by the Petitioner while withdrawing the subsistence allowance shall stand discharged.

10. We, therefore, do not find any merit in the petition. The petition is accordingly dismissed. There shall be no order as to costs.

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